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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.100 OF 1999
IN
TESTAMENTARY PETITION NO. 447 OF 1999

Mrs.Sanyukta G.Shah .. Petitioner
V/s.
Ami Shah .. Respondent

Mr.Shavan Jaghani a/w. Ms.Pinky Patel i/b.Desai & Dewanji for petitioner.
Ms.Ami J.Shah caveatrix present in person.

CORAM : S.J.VAZIFDAR J.
DATE : 28th September, 2007.

P.C. :-

1. The caveatrix has filed the caveat on behalf of her minor son.

2. The above suit has been listed under the caption of withdrawal under the following circumstances.

3. Family Court Appeal being FCA (ST.)No. 24719 of 2006 was filed by one Jagdeep Shah who is the husband of the caveatrix. The Family Court Appeal was disposed of by an order of a Division Bench dated 16th November, 2006. The said order dated 16th November, 2006 modified the consent terms filed by the parties before the Family Court. Clause 7 of the consent terms reads as under :

> "7. Respondent shall withdraw objections raised by her as guardian of minor child Akash in the Testamentary Petition No.447/99 and Suit No.100/99 pending in the Hon'ble High Court, Mumbai and does contest the suit. The same shall be done after Petitioner deposits 50 % of the amount of permanent alimony in this Court".

4. The Division Bench modified the said clause 7 as under :

> "4. So far as clause (7) is concerned, following clarifications to be added to clause (7).
>
> The withdrawal of objections by the respondent wife shall not come in the way of the child to assert his right, if any, in the property involved in the said testamentary petition after he attains majority. The wife will not be liable to face any prosecution either civil or criminal for whatever stand she has taken in the caveat at the instance of the husband or any one on his behalf".

5. Being aggrieved by the said order the Caveatrix filed a Petition for Special Leave to appeal to the Supreme Court. The Supreme Court passed the following order :

> "We are not inclined to entertain this Special Leave Petition excepting that it will be open to the petitioner - Ami Jagdeep Shah - to approach the High Court for recall of the impugned order as we find the said order was passed with consent of the parties. The petitioner herein denies having given any consent to pass the said order.
>
> The Special Leave Petition is dismissed accordingly".

6. Pursuant to the liberty granted by the Supreme Court, the petitioner filed a Civil Application being Civil Application no. 136 of 2007 in the said Family Court Appeal for recall of the order dated 16th November, 2006 which was rejected by an order dated 18th June, 2007.

. Certain contentions were raised by the caveatrix who appeared in person regarding the validity of the aforesaid orders passed by this Court. It is not open to me to consider the said contentions. Needless to state that the above orders are binding on this Court.

7. The caveatrix states that she requires some time to adopt proceedings only for the purpose of protecting the rights of the minor child who is today 16 years old.

8. Under the circumstances, the following order is passed :

:: O R D E R ::

i. In accordance with the above order the objections raised by the caveatrix shall stand withdrawn and the office is directed to proceed on the basis that the above petition is

uncontested.

ii. The petitioner is at liberty to make an application before the Family Court to withdraw the amounts deposited by her husband.